

**Award No. 1909
Docket No. 1756
2-AT&SF-CM-'55**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carmen H. A. Richardson and C. C. Fox, regularly assigned wrecking crew members, were improperly compensated for some of the wrecking service in connection with the rerailment of Diesel Engine No. 2814 on November 6th and 7th, 1953.

2. That accordingly the Carrier be ordered to additionally compensate these employes at the time and one-half rate for their traveling and waiting time on the aforesaid dates between

(a) 9:30 P. M. and 11:15 P. M., November 6, 1953

(b) 2:00 A. M. and 3:30 A. M., November 7, 1953.

EMPLOYEES' STATEMENT OF FACTS: H. A. Richardson and C. C. Fox, hereinafter referred to as the claimants, are regularly employed as carmen by The Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier, at Wellington, Kansas. Claimants are bulletined and assigned the working hours of 8:00 A. M. to 12:00 Noon, and 1:00 P. M. to 5:00 P. M. Mondays through Fridays, with rest days Saturday and Sunday. In addition thereto claimants are bulletined as members of the regularly assigned wrecking crew.

On November 6, 1953 at Blackwell, Oklahoma, carrier's Diesel Engine No. 2814 was derailed and the claimants were called after their regular assigned hours of work to perform this rerailment service. They were instructed to load the carrier's automotive truck with necessary jacks, blocking and other tools and upon doing so, they proceeded at 9:30 P. M., by truck to the scene of the accident whereat they arrived at 11:15 P. M., on November 6, 1953. These claimants completed the rerailment of this Diesel locomotive at 2:00 A. M., on November 7, and thereupon they proceeded to their home station, arriving there at 3:30 A. M.

and precise. They relate specifically to "wrecking service" and do not apply to minor derailments where a wrecker is not called or needed. See Second Division Award 1474, Referee Edward F. Carter, reading in part:

"When the language of a rule is plain as to its meaning, it is not subject to construction. It will be enforced as made. This Board has no equitable powers and, consequently, no authority to impose its ideas of justice and fairness in a matter that is plainly covered in the agreement by clear and concise language. We have no right to construe language which is so plain in its meaning as to be beyond interpretation . . ."

AWARD:

Claim denied."

The claim of the employees that the claimants should be paid for travel time to and from Blackwell under Rule 9 (e) is not supported by any rule in the agreement. It is obvious that the employees are attempting to obtain through this Board a change in the rules agreement, which is not a function of the Board. See excerpts from awards quoted below:

Second Division Award 1122:

" . . . This Board cannot make or amend a rule. It is bound by the agreement which the parties have made . . ."

Third Division Award 1290:

" . . . It has further been the constant holding of this Board that it cannot make a new agreement for the parties so as to include positions not covered in the agreement the parties themselves have made."

Third Division Award 1687:

" . . . It is apparent, therefore, that what this board is asked to do is to frame a rule which may apply to situations which may arise in the future not only with respect to this employe but with respect to all others similarly situated. It has been repeatedly held that this board has no authority to make rules. Its function is to interpret them and apply them to the facts of particular cases . . ."

Third Division Award 2132:

"It seems to us, however, that it is not advisable, even to reach a result which might appear equitable, to attempt to read into a rule something which is not there. The weight of authority, as well as sound reason, supports this principle."

Carrier asserts that the employees' claim in this dispute is entirely without support of the agreement rules and should be denied in its entirety.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

A locomotive was derailed outside of yard limits and the regularly assigned carmen, who were also regularly assigned wrecking crew members, were sent with a carman driver in a carrier-owned highway truck equipped with necessary implements, to rerail it. They were paid straight time rate under their Rule 9 (a) and claim time and one-half under Rule 9 (e). The former provides for payment when called away for emergency road work and the latter specifically for payment for wrecking service.

Carmen's special Rule 108 provides for regularly assigned wrecking crews who will be paid for wrecking service under Rule 9 (e), and who will accompany the outfit when called for wrecks and derailments outside of yard limits. Thereunder we think rerailing is included in wrecking service. It is generally so regarded. Awards 1062, 1126, 1327. Had the outfit been called for a derailment they would have been entitled to be paid under Rule 9 (e).

The fact that it was not deemed necessary in this case to call the outfit but only the equipped truck does not change the nature of the service. Payment under Rule 9 (e) is not restricted to Wrecker Outfit service, (see Award 1177), where use of the wrecker is required, nor does it exclude rerailing service. It provides that "wrecking service will be paid under this rule." Therefore it must be intended to include the work here involved.

AWARD

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1955.